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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 143

JAMES PALMER,

Appellant,

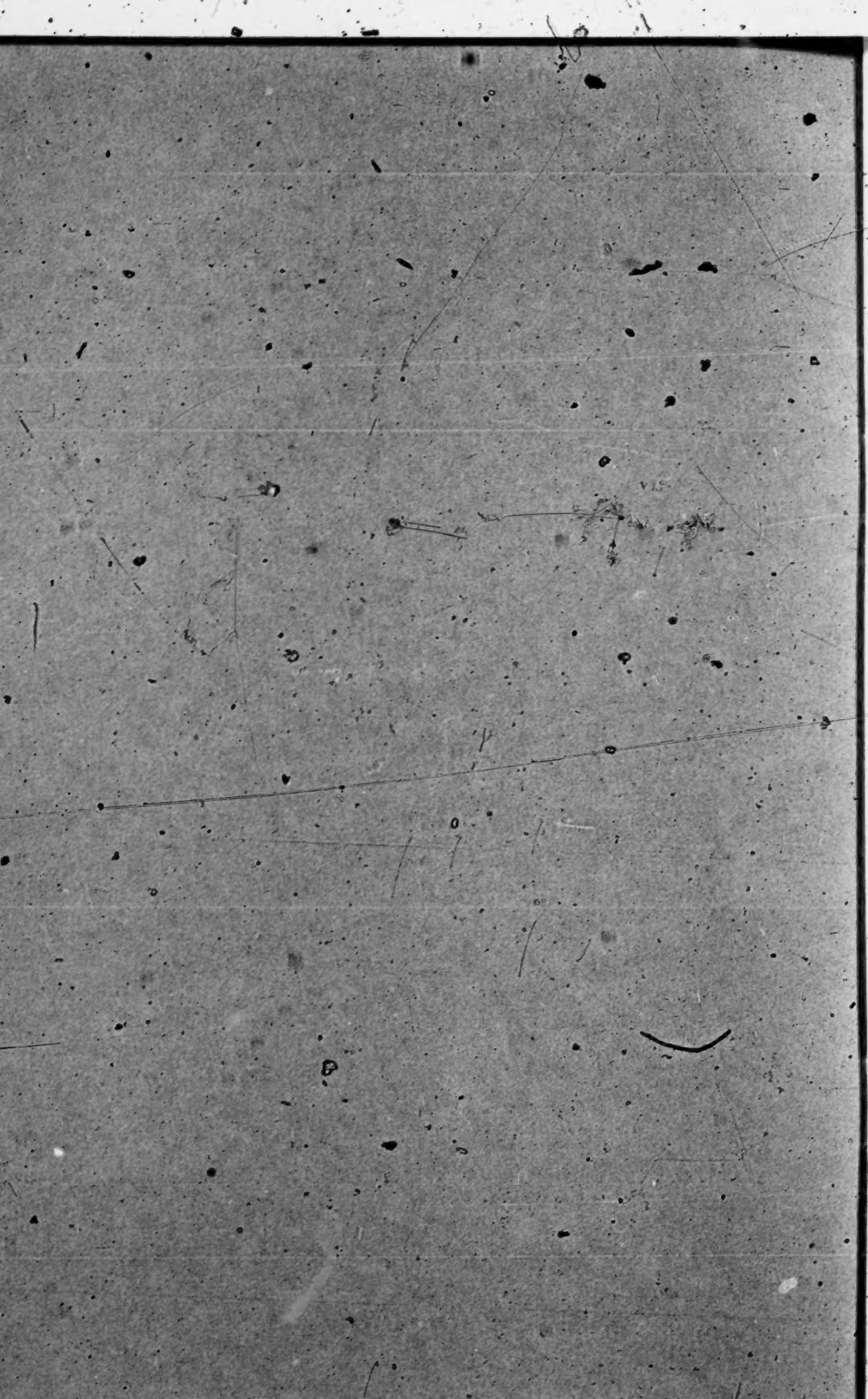
vs.

CITY OF EUCLID, OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

FILED APRIL 23, 1970
PROBABLE JURISDICTION NOTED MAY 4, 1970



IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1516

JAMES PALMER,

Appellant,

—v.—

CITY OF EUCLID, OHIO,

Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

April 19, 1967—Defendant Palmer charged, by affidavit filed in the Euclid Municipal Court, with acting in a suspicious manner in violation of Ordinance No. 583.01.

April 26, 1967—Defendant pleads Not Guilty.

August 21, 1967—Parties in Court. Trial had.

August 21, 1967—Jury finds defendant guilty as charged.

August 21, 1967—Court orders defendant to pay a fine of $50.00 and costs and to serve sentence of 30 days in the Cuyahoga County jail. Execution stayed pending appeal.

September 7, 1967—Motion to permit filing of motion for new trial granted.

September 13, 1967—Motion for judgment for defendant notwithstanding the verdict and motion for new trial overruled.

September 22, 1967—Notice of appeal on questions of law filed by defendant.

August 13, 1968—Judgment of Cuyahoga County Court of Appeals affirming the judgment of conviction.

September 11, 1968—Notice of appeal to the Supreme Court of Ohio filed by defendant.

December 18, 1968—Order of Supreme Court of Ohio dismissing appeal sua sponte for the reason that no substantial constitutional question exists.

December 18, 1968—Order of Supreme Court of Ohio denying motion to certify record.

January 2, 1969—Motion for rehearing filed.

January 22, 1969—Rehearing denied.

April 9, 1969—Notice of appeal to United States Supreme Court filed.

IN THE MUNICIPAL COURT
OF EUCLID, OHIO

Case No. 72818

CITY OF EUCLID, PLAINTIFF

v.

JAMES PALMER, DEFENDANT

AFFIDAVIT
Filed April 19, 1967

Case No. 72818

STATE OF OHIO
CUYAHOGA COUNTY
CITY OF EUCLID

MUNICIPAL COURT
EUCLID, OHIO
AFFIDAVIT

The Undersigned, Being First Duly Sworn, Deposes and Says:

On the 19 day of Apr., 1967 at 2:35 A.M.,
(Name) James Palmer
? ☐ Married ☐ Single (Please Print)
Tel. No. .....
(Street) 14632 Coit Rd. (?)
(City-State) Cleveland, Ohio
Employer ..... ? ..... Occ. ..... ? .....
(Driver's Lic. No.) ..... did unlawfully operate motor vehicle (Lic. No.) EG-7880 Make Chevrolet upon a public highway in the City of Euclid, County of Cuyahoga and State of Ohio, namely at (Location) 19219 Euclid Ave. and did there and then commit the following offense:

SUSPICIOUS PERSON

Speeding at rate of ..... m.p.h. in a ..... m.p.h. zone greater than reasonable or proper under existing conditions.

Disregard traffic signal:

Slow Sign ☐ Stop Sign ☐ Red Light ☐ Radar ☐ Sign Posted

Other violations and arresting officer's Remarks

Acting in a suspicious manner at above location. Additional information—see sup. report.

In Violation of
City Ordinance No. 583.01 Ohio Gen. Code Sect. No. _____

CONDITIONS

✔ Clear	☐ Dawn	☐ Light traffic	☐ Accident involved
☐ Rain	☐ Dusk	☐ Medium traffic	☐ School zone
☐ Snow	☐ Day	☐ Heavy traffic	✔ Residential
☒ Ice	✔ Night	☐ Personal injury	☐ Business
☐ Fog		☐ Property damage	☐ Freeway
		☐ Almost caused accident	☐ Had been drinking

INFORMATION

Birth date 5-17-32
Sex M-Colored
Height 6'1" Weight 180
Am't of Bond
$_____

Sworn to and acknowledged before me this 19 day of April, 1967.

/s/ [Illegible]
Deputy Clerk
Municipal Court

LT. ZACH
/s/ Joseph Zupanic #51
Signature and identification of officer or other complainant

FABEC #28

Court Appearance 26 day of Apr. 1967, at 9:30 a.m.,
Municipal Court—545 East 222nd St., Euclid, Ohio

For Waiver Privilege See Reverse Side of This Summons

Affidavit—Phone J. Palmer, 851-6616

DEFENDANT'S BILL OF EXCEPTIONS
Filed September 8, 1967

[fol. 3] Transcript of proceedings had in Municipal Court, Euclid, Ohio, commencing at 9:00 a.m., Monday, August 21st, 1967, before HONORABLE WILLIAM BURNS, and a jury of six.

APPEARANCES:

On behalf of the City of Euclid:

ROBERT STEEL, Police Prosecutor

On behalf of the Defendant:

JAMES PALMER

* * * *

[fol. 15] PLAINTIFF'S CASE

JOSEPH ZUPANIC,

of lawful age, a witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Steel:

Q Will you please state your name?
A Patrolman Joseph Zupanic.
Q And you are a member of the City of Euclid's Police Department?
A That is correct.
Q How long have you been a member of the Police Department?
A Approximately 12 and a half years.
Q Besides your duties as a patrolman on the Euclid Police Department do you have any additional employment on your off-duty hours?
A Yes, I am employed part-time by Hill Top Management Company, Indian Hills Colony Apartments.

Q What are your duties in the employment of Hill Top Management, Indian Hills Colony Apartments?

A Mainly patrolling the area on foot and also in my own car, checking the buildings and so forth.

[fol. 16] Q Indian Hills Colony Apartments are located where?

A Approximately East 193rd and Euclid Avenue.

Q That's in what city?

A City of Euclid.

Q Calling your attention to the 19th day of April, 1967, in the early morning hours of that day, what were you doing from midnight until, let's say, 3:00 o'clock that day?

A From midnight until about 2:00 o'clock or so I was patrolling on foot throughout the whole area, which goes down to the end of East 193rd Street and from about 2:00 o'clock or so, after I was in my vehicle checking the parking lots.

Q All right, and about 2:30 a.m., on that particular morning did anything unusual occur?

A Yes. I observe this vehicle travelling east in the driveway of the parking lot, fronting on Euclid Avenue approximately between C and B buildings. I was travelling west in the driveway and noticed this vehicle travelling at a very slow rate of speed, approximately about a rate of 3 to 5 miles an hour.

Q Anything unusual about the vehicle?

A No headlights. It had no headlight on it at all, that's what aroused my suspicion to the vehicle.

[fol. 17] Q What, if anything, did you further observe?

A I observed the driver, that's the Defendant, Mr. Palmer, here, and he had a female companion, colored female on the passenger side of the vehicle. He dropped the passenger off at the front door of B building which is located right on the corner of 193rd and Euclid Avenue, and I turned my car around in the next driveway to follow him and see what was going on. As I approached East 193rd he was stopped just before entering East 193rd when I pulled behind him. He turned his lights on and he pulled on to East 193rd Street and

parked next to the curb. So I pulled my vehicle to the opposite of the street and got out of the car and approached him. As I approached his vehicle he had a microphone in his hand, talking on a two-way radio. I asked him who he was talking to on the radio, and he said he was just testing it. So I then asked him for identification and to get out of the vehicle. It was very dark in this area, I couldn't see too much of what was going on underneath there. I had him get out of the vehicle and show me his driver's license, and I asked him who the person was that he dropped out of the vehicle in front of the building. He said that it was just a friend, and I said, "Where did your friend go?" He said he didn't know, so I took him inside of the building, to the [fol. 18] lobby of the building and watched him while I called the police department, and asked for some assistance so we could make a search of the building to see where this female went to. Lieutenant Zach arrived with Patrolman Fabec and several other patrolmen. We made a search of the building and we stationed one policeman in the lower lobby to watch in case there—there are stairways in this building, it is six stories high, and an elevator in there too. We went on the elevator to check it out, and the locker rooms, we have had breakins into the locker area. We could not find the female anywhere. We returned back to the lobby and asked Mr. Palmer again, where his friend had gone. He finally admitted that she went into a suite up there, he took us up on the elevator to the fifth floor and took us directly to the doorway of a particular suite. This suite is occupied by two bachelors in this particular building and the party came to the door when we knocked on it. We asked if a colored female had come in here, and they said no, so we left the area, went back to the lobby and we had Mr. Palmer's car towed. It was brought to the station to be held for investigation.

Q Did Mr. Palmer—did you ask Mr. Palmer where he lived?

A Yes.

[fol. 19] Q What did Mr. Palmer tell you?

A In the station I asked him what his address was, he gave me one address and then changed his mind and gave me another address, and changed his mind and gave me a third address. He gave me three different addresses, so I really don't know whether it was the correct address he gave me or not.

Q Did you ask Mr. Palmer what he was doing there in the particular vicinity of Building B, of the Indian Hills Colony Apartments, there on East 193rd Street at 2:35 in the morning, on the 19th day of April?

A I asked him, he told me he just dropped his friend off, that's all he would tell me. He couldn't give me the name of his friend when I asked him what the female's name was, he said he didn't know.

Q Do you know where the friend of his lives?

A No, he didn't give me any name or address.

Q Patrolman, do you know whether or not there was any colored females living at the Colony Hills Apartments on the 19th of April?

A No, there are not, none whatsoever.

MR. STEEL: I have no further questions.

THE COURT: You may inquire of the officer on cross examination.

[fol. 20] CROSS EXAMINATION

By Mr. Palmer:

* * * *

[fol. 26] Q Somebody was around there? When you approached my car and asked for my driver's license you said—repeat again what you said happened when you approached my car and asked me for my driving license?

A Just asked you for your driver's license and told you to step out of the vehicle.

[fol. 27] Q And then once outside of the vehicle did anything happen?

A Yes, I searched you for a weapon, up against the car.

Q You searched me and what else?

A I had you up against the car and searched you for a weapon on your person?

Q And then what did we do?

A We went into the lobby of the building.

Q Was at any time, I am speaking of the time that I was sitting in the car and I got out of the car, and you searched me, that you had your gun out of its holster?

A No, I unflapped the flap on it but I didn't have it out, yes, sir.

Q You are saying that your gun was not out of your holster?

A No.

Q Pointed at me?

A Not this time.

Q Not at this time, well was it at a later time?

A Yes, sir, there was.

Q When was this?

A When I marched you into the building.

* * * *

[fol. 32] Q Did the fact that this woman entered the Indian Hills Colony Apartments, 192nd and Euclid Avenue have anything to do with your arresting me, with you arresting me?

A. Well, I would say it might have had some bearing on it in a way.

Q Then it either did or didn't. Yes, it did or no, it didn't.

A The fact that you couldn't give an accounting of your presence—

MR. PALMER: Your Honor, the witness is not responsive.

THE COURT: Just answer the question, officer.

MR. PALMER: Repeat the question.

(Reporter read question.)

A Yes, I would say it had some bearing.

[fol. 33] Q Did the fact that I would not give you any information concerning this woman have anything to do with you arresting me?

A Yes, I would say that had some bearing also.

Q Did the fact that I wouldn't give you any information concerning this woman cause you to look for her?
A Yes, that is correct.
Q Did you ask me the following: Who she was?
A Yes, sir, I did.
Q Where did she go?
A Yes, I did.
Q What she was doing there?
A That is correct.
Q Did you observe this woman breaking any laws?
A No, I didn't.
Q Well then, wasn't it just out of curiosity or suspicion in your mind that you wanted to know who she was?
A That is correct.
Q Was it just out of curiosity or suspicion in your mind that you wanted to know what she was doing in the building?
A That is correct.
Q Was it just out of curiosity and suspicion in your [fol. 34] mind that you wanted to know where she went?
A That is correct.
Q And was it just out of—this might—I might be repeating this question—was just on suspicion in your mind that you searched for this woman?
A Yes, we did.
Q Did you see this woman break any laws?
A No, I didn't see her break any laws.
Q But you searched for her anyway?
A That is correct.
Q You say you searched the locker rooms, the locker rooms for this woman?
A Locker rooms and hallways.
Q Locker rooms and hallways?
A That is right.
Q What concern was it of yours as to where she went?
A As to where she went, is that—
Q Yes.
A It's my job, there.
Q As to where she went?

A As a policeman.

Q As a policeman?

A Yes.

Q Does the leasing agent of this building have an [fol. 35] agreement with the tenants that they or whoever visits them, that is sign in or something?

A No.

Q Did you observe anything strange that would make you think this woman was doing anything?

A The fact that your headlights were off, for one.

Q Was she driving the car?

A No, she was a passenger in it.

Q Were any laws broken because the headlights on the car were off?

A Not at the time on private property. No laws were broken.

* * * *

[fol. 41] Q From the time that you observed the car with its lights off, until the time that the car stopped at the edge of the driveway, did you observe any laws being broken?

A Not at the time, yet, no.

Q Not at the time, did you say?

A No. Not until you parked.

Q I didn't hear you.

A Not until you parked the car at the curb.

Q Well, what did you observe being broken when I [fol. 42] parked at the curb?

A There is a no-parking sign there.

Q Did I stop my car or park my car?

A You stopped.

Q Did I park my car?

A You didn't get out of the car, you parked it.

Q Then it would be termed by the City of Euclid—did I park my car by the curb?

A I am not sure, there was a sign that says no stopping or parking. I will not positively—

Q Then if your're not sure, let me ask you again. From the time that you observed the car with the lights off until the time it stopped at the edge of the driveway, did you observe any laws being broken?

A Well, let's say I didn't observe any traffic laws being broken.

Q Did you observe any laws being broken?

A No.

Q When the car moved on to 193 Street, did you observe any laws being broken?

A No.

* * * *

[fol. 43] Q Did I tell you that I had stopped the car and was talking to the young lady and upon moving off again I forgot to turn my lights on, if they were off at all?

A I don't recall if you said that or not.

Q Can you tell me how many other cars you seen driving in Indian Hills Colony Apartments, with their lights off?

A Very seldom.

Q And if you saw a car driving with its lights off would that note a suspicion in your mind?

A In some cases.

Q In some cases?

A Yes.

Q Other than the fact that the car had its lights off, was it being driven in a normal manner?

A No, I would say not in a normal manner, it was being driven very slowly.

Q Was it going slower than you were?

A I couldn't say for sure, usually travels pretty slow.

Q But how fast was the car being driven?

A My car or your car?

Q My car.

A I would say three to five miles an hour.

Q On the night in question, how many cars would [fol. 44] one find on the premises of Indian Hills Colony Apartments?

A Would you repeat the question?

Q On the night that you arrested me, how many cars would one find on the premises of this apartment complex?

A I still don't get the first part of your question.

Q On April 19th, 1967, how many cars would one find on the premises of Indian Hills Colony Apartments, how many cars would be parked there on the night at 2:35 in the morning?

A Parked in the parking lot, I would say there was—

Q On the premises.

A Maybe 2,000 in the whole area.

* * * *

[fol. 59] Q Then you don't know whether I owned the car or not, do you?

A No, I don't.

Q Isn't it a normal—withdraw that. It is a policy of yours when you stop someone for suspicion you verify the ownership of the car that they were driving?

A Not all of the time, no.

Q So then the car could have been a stolen car?

A No, we know it was not a stolen car.

Q How do you know that?

A We checked the sheet, the car sheet.

Q In other words for a car to have been stolen the car would have been on the sheet that you checked, am I right?

A Not exactly.

Q Well, do you know whether the car was stolen or not?

A As far as we were concerned, from the record of the stolen car sheet and the teletype, it was not stolen.

Q As far as you were concerned. How large is this interrogation room where the interrogation took place?

MR. STEEL: Your Honor, I appreciate the fact that Mr. Palmer is not a lawyer, and for this reason throughout the morning and the last 15 minutes or so I have refrained from objecting to what I feel is perhaps a rather broad range of cross examination.

* * * *

[fol. 61] Q Inside of the building while we were wait-
[fol. 62] ing for the police officers to come, did you ask me any questions?

A Yes, I asked you—

Q Did you advise me of my constitutional rights rights before you asked me those questions?

A Not at that time, I didn't, no.

Q Was this lady a suspicious person, the one that got out of the car?

A No, not in my statement she wasn't.

Q But you and the lieutenant were looking for—withdraw that. But you were looking through the locker for this woman?

A Yes.

Q And the hallways?

A That is correct.

Q Did you check the lockers and see if they had been broken into?

A Yes, we did.

Q Did you check the locks on the lockers also?

A Yes.

Q Did you find anything broken into?

A No.

* * * *

[fol. 63] Q As far as you were concerned did this lady enter the building in a normal manner?

A Yes, she entered in a normal manner.

Q As you passed by the building did you see the lady inside of the building?

A No, I didn't.

Q Did you see her on the outside as you drove past?

A No, she was gone already from the lobby when I approached, when I made my turn and came back, she disappeared.

Q Are you sure that she entered the front door of the building?

A Yes, I observed that from my rear window.

Q As you passed the building did you observe anything that gave you the impression that the young lady had forced her way into the building?

A No.

Q And we can assume, can we, that the fact that you say she was colored and that no colored lives in that build-[fol. 64] ing, that you did not believe she lived there?

A I know she doesn't live there.

Q You know that she doesn't live there?

A Yes.
Q Do you also know that she was invited there?
A No, I didn't know.

* * * *

[fol. 66] Q Did you, either one of these other officers have any thought as to what had happened to this woman when you were unable to find her?
A Well, they just looked for her, made the search and she couldn't be found, we left and took you in.
Q Did we all leave the building together?
A No, you left with the other uniformed men and I brought my own car in.
Q How long did I leave before you left?
A Maybe five or 10 minutes, approximately.
Q When you started to go up to the elevator with the [fol. 67] lieutenant did you tell the officers down stairs, "Hold a colored woman if she comes down"?
A That is right.
Q Did you describe this woman to the officers?
A No, all I know she was a colored female.
Q Then what you meant was hold any colored woman who happened to come down?
A Yes.
Q Now, regards to whether she was any woman or not, hold a colored woman if she comes down, am I right?
A Yes.
Q When you saw as I parked on 193rd Street, the radio in the car, am I correct in saying that you saw me with the microphone in my hand?
A That is correct.
Q Did you hear me talking?
A I heard you talking, but you couldn't make out your message, what you said.
Q I told you that I was testing the radio?
A That's what you told me, yes.
Q Was the radio in the car a suspicious item?
A Yes, in my estimation, it was.
Q It was suspicious, just in your estimation?
A Yes.
[fol. 68] Q You felt you had a right to inquire concerning this radio?

A That is correct.

Q You know of any law in the City of Euclid prohibiting the use of mobile citizen ban receivers?

A No.

Q Do you know of any law in the State?

A Not that I know of.

Q Do you know of any law in the United States?

A I don't know of any.

Q Are you familiar with any—are you familiar with Part 95 of the Federal Communications Act?

A No, I couldn't tell you what it was.

Q Are you aware that citizen-band radios are covered under the federal statutes?

A Yes, I believe they are.

Q At the time you inquired concerning this radio were you aware that citizen-band transceivers were covered by federal statutes?

A Yes.

Q Were you aware upon search of the car that radio displayed all necessary requirements of the FCC for its operation?

A I didn't search the car.

[fol. 69] Q Well, as you looked into the car at the radio, did you notive that—withdraw that. Upon seeing the radio did you ask for its identification?

A No, I didn't.

Q Well, really other than the fact that the radio was suspicious you know nothing about citizen-band radio, am I correct?

A I am not expert on it.

Q Other than the fact that this was a suspicion concerning this radio, you know nothing about a citizen-band radio?

A No, nothing other than my suspicion.

Q Are you in the habit of passing judgment on something you know nothing about?

MR. STEEL: I object.

THE COURT: Sustained.

By Mr. Palmer:

Q Are you familiar with Section or Chapter 583 ordinance in the City of Euclid?

A Yes, I am.
Q Do you know the provisions under this chapter?
A Most of them, yes.
Q And they are—
A I have to see the ordinance to read them all, I don't know them all by memory.
[fol. 70] Q Well, the suspicious persons provisions of the chapter states that several specific reasons where a person would be deemed as suspicious in the eyes of the law and subsequently could be arrested. Do you know of these reasons?
A I know some of them, yes.
Q And what are they?
A I have to see the record to read all of them to you, I don't know from memory. Like I told you I know the broad form of the ordinance.
Q Well, will you please tell the Court which one of these reasons pertain to me at the time of my arrest?
A Yes. The terms that I was working on in this particular ordinance was acting in a suspicious manner during the night season, loitering in an area without being able to give an account or reasonable account of yourself, what you were doing there. That is the broad form of it.
Q Did I tell you that I had brought a young lady there?
A Yes, you did.
Q Did you see the young lady that I brought there?
A Yes, I did.
Q Well up until the time you approached my car on East 193rd Street what was I doing at the building?
A You were travelling with your lights off at a very slow rate of speed, in fact you were using a two-way [fol. 71] radio at 2:35 a.m. in the morning, these were my reasons.
Q Up until the time I parked on East 193rd Street what did you see me doing at the building?
A You didn't do anythi- at the building.
Q Did you see me drive a young lady up to the front door of 19219 Apartment B, I mean building B, Indian Hills Colony Apartments?
A Yes, I did.

Q You saw the young lady get out of my car and head for the building?

A Yes, I did.

Q And I think you stated that she went in the building, am I correct?

A That is correct.

Q So then, did I tell you that I had brought a young lady to the building?

A That you dropped a friend off, you told me.

Q Well, I told you, did I tell you that I had—I told you I had dropped the friend off at the building?

A Yes.

Q The fact was because I wouldn't give you any information concerning the lady you arrested me?

A That's one of the reasons.

Q Was there a speed limit in the parking lot?

[fol. 72] A There is no set speed limit there.

Q Handing you what has been marked Defendant's Exhibit E, do you notice anything in that picture? Is that a picture of Indian Hills Apartments, to the best of your knowledge?

A Yes.

Q Do you know anything of that picture that would lead one to believe that there is a speed limit on the premises of the Indian Hills Colony Apartments?

A Yes, that's privately posted sign.

Q What does it say?

A Speed limit 15.

Q Was the fact that the young lady entered the building one of the reasons why you stopped me?

A It was one of the reasons, yes.

MR. PALMER: May I approach the bench?

THE COURT: Yes, sir.

(The prosecutor and the Defendant approached the bench. Discussion was had out of hearing of the jury.)

By Mr. Palmer:

Q When you first saw the car driving towards you in the parking lot at Indian Hills Colony Apartments, did you have any report of any crime having been committed?

[fol. 73] A No.

Q Had you received any personal instructions for investigation of any particular crime that night?

A No.

Q From the police department did you receive any special instructions?

A No.

Q From your office at the building did you receive any instructions?

A No.

Q Were you informed by radio, telephone or any other means of communication of a crime on that night?

A No.

Q So then, you weren't, you were not specifically investigating any particular item other than occupants driving with its lights off at Indian Hills Colony Apartments, am I correct?

A At that particular time, yes.

Q When you searched me what did you find?

A Nothing.

Q Were you looking for anything in particular?

A Weapon.

Q For the entire time you observed the car and its occupants was there any noise or disorder of any kind?

[fol. 74] A No.

* * * *

Q I have just three or four more questions. Did you not know of any crimes that the woman had committed?

A No.

Q Why were you looking for her?

A Mainly looking for her in the prevention of crime at this particular instance.

Q Did you have any report of any crime that was being committed?

A No.

* * * *

[fol. 77] REDIRECT EXAMINATION

By Mr. Steel:

Q Patrolman, you have other duties in connection with your private employment by Hill Top Management

of the Indian Hills Apartment, than crime protection, do you not?

A Yes.

Q What are these other duties, with Hill Top Management?

A I check the buildings for loud parties, people drinking, intoxicants, and so forth, and cautioning disturbances, parking problems, issuing citations in the fire lane.

Q Primarily prevention would be part of your duties, as well as a protection?

A Definitely, crime prevention, we have had many cars broken into in this area, automobiles stolen, lockers in the building broken into and other various types of crime.

[fol. 78] Q Now, during the course of your 12 years as an officer of the Euclid Police Department, are you familiar, Patrolman, in the manner in which two-way radios or walky-talkies or various communications devices of this nature are used by persons engaged in the commission of crime?

A Yes. Walky-talkies are used by the modern day criminal in holdups, burglaries, bank stickups and various types of crime. They could have a receiver, they also have a pocket receiver on which they may receive messages from a central location. There are several different types of walky-talkies and receivers on the market today that are used like I say by the modern day criminal.

Q After you discovered that Mr. Palmer had a two-way radio in his car, do you not know as a result of your investigation whether or not this woman that he discharged at the apartment had a receiver or not, do you?

A No, I don't.

Q Not to this day, do you?

A No.

Q Now, I believe the testimony indicates that Mr. Palmer told you that he had discharged a young lady at the entrance to the Apartment B; did he tell you whether or not that he was waiting for this young lady?

A No, he didn't say. He said it was a friend and he [fol. 79] wouldn't give me any information or the name of this party, just a friend.

Q In the course of you conversation with him since, did he tell you that he knew which apartment she was in, is that right?

A Later on, yes, he admitted to you and to us to the apartment.

Q Was she in this apartment to your knowledge?

A The man said she was not there.

Q Now, what was it, Patrolman, the fact that this automobile had no headlights on it the reason that raised your suspicion?

A No.

Q Was the fact that it was travelling between three and five miles an hour alone that raised your suspicion?

A No.

Q Was the fact that it discharged a colored lady at the door of an apartment where you knew that no colored ladies lived alone that raised your suspicion?

A No.

Q Was the fact that the driver of this automobile parked on the dark side of the street, 193rd Street alone that raised your suspicion?

A No.

[fol. 80] Q Was the fact that this man was using a two-way radio alone that raised your suspicion?

A No.

Q Was the combination of all of these facts that raised your suspicion?

A That is correct.

Q Did Mr. Palmer that night either on East 193rd Street, in the police station or at any time up to and including today give any satisfactory reason for his presence there on East 193rd Street and in the parking lot of the Indian Hills Apartment?

A No, he never did.

MR. STEELE: I have no further questions.

RECROSS EXAMINATION

By Mr. Palmer:

* * * *

[fol. 82] Q Was the fact alone that the young lady, that a colored woman entered Indian Hills Apartments one of the reasons that you arrested me?

A It was one of the reasons, yes.

Q Did entering the Indian Hills Apartments by the woman violate any laws?

A No.

Q Was the fact that alone, that I did not have my [fol. 83] lights on while driving in the parking lot one of the reasons that you arrested me?

A No.

Q Was any laws broken because I did not have my lights on?

A No.

Q Was the fact alone that you saw a C-B radio in the car one of the reasons that you arrested me?

A No.

Q Was this fact that you saw a C-B radio in the car in violation of any law?

A No.

Q Was the fact that I could have been talking to that radio one of the reasons that you arrested me?

A No.

Q Was the fact that I could have been talking on that radio in violation of any law?

A No.

Q Was anything done that night in violation of any law that you observed?

A Yes, the combination of facts.

Q Individually?

A No, collectively.

Q Individually there were no violations but a com- [fol. 84] bination of the facts made them violations of a city ordinance, am I correct?

A Collectively, yes.

* * * *

[fol. 85] AUGUST ZACH,

of lawful age, another witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Steele:

Q Will you please state your full name?
A August Zach.
Q And by whom are you employed?
A City of Euclid, Police Department.
Q Are you a lieutenant in the Police Department, is that correct?
A I am.
Q How long have you been a member of the Police Department?
A 32 and a half years.
Q Lieutenant, you were on duty in the Euclid Police Department during the early morning hours of the 19th day of April, 1967?
A I was.
Q Did you have occasion, Lieutenant, to take a telephone summons from Patrolman Zupanic to go to the Indian Hills Colony Apartments, 19219 Euclid Avenue, in the City of Euclid during the early morning hours of that day?
[fol. 86] A I did.
Q When you arrived at these apartment buildings, did you have occasion to go into Building B?
A. I did.
Q Did you discover Patrolman Zupanic there in Building B?
A. I did.
Q Was anyone else with him?
A Yes, he had the gentleman here in the lobby.
Q Did you have occasion then to have any conversation with Mr. Palmer there in the lobby of Building B?
A Yes, I did.
Q Do you recall what this conversation was about?
A Well, I asked him what he was doing there and he said he was dropping off a friend. I asked him who the friend was, he didn't know, he said it was a female. And when I asked him where the woman went, he didn't know. After we questioned him a little while he said, "OK, I'll take you upstairs to the fifth floor where she is supposed to be." We went up to the fifth floor to this

apartment where he claimed she was, we rapped on the door and a male answered the door. I asked if there was a woman in there, he said no.

We searched the building and didn't find her.

[fol. 87] Q Did Mr. Palmer tell you anything that led you to believe that he was employed by the Hill Top Realty Company, Incorporated, or the Indian Hills Colony Apartments?

A No, he did not.

Q Did Mr. Palmer tell you anything that led you to believe that he had any friends who had invited him to the Indian Hills Colony Apartments?

A No, he didn't.

Q Did Mr. Palmer tell you anything that would lead you to believe that he had any lawful business there?

A No.

Q Other than the fact that Mr. Palmer told you that he had dropped off this friend who he would not identify, and whom he indicated had gone to an apartment, where you were told she was not, did he give any other account for why he was there in front of Indian Hills Colony Apartment, Building B. or on East 193rd Street at 2:30 in the morning, on the 19th day of April, 1967?

A Not to me, no.

* * * *

[fol. 106] RECROSS EXAMINATION

By Mr. Palmer:

* * * *

[fol. 107] Q When the Prosecutor asked you, on redirect?

Did you tell the Prosecutor that had you found the woman in an apartment there on legal business, you would not have permitted the arrest? Did you say that?

A That is right.

* * * *

[fol. 110] Q Would you have withdrawn the citation?

A Yes.

Q If it was proven that the woman had a lawful reason to be there?

A No.

Q Okay. And if you wouldn't have permitted the citation, then by being officer in charge, what would you have directed Officer Zupanic to do, as far as I was concerned?

A We would have brought you into the station and had you sign a waiver card that we detained you.

Q What is this waiver card? If I would refuse to sign the waiver card, then what would have happened to me?

A Well, then, we would have detained you, probably issued the citation, because you refused to sign the card.

Q You would have issued a citation for my arrest even though you found this lady lawfully at the building; is that what you're saying?

A That is right. If you refused to sign the card.

* * * *

[fol. 129] COURT'S CHARGE TO THE JURY

* * * *

THE COURT: Members of the Jury, it now becomes my duty as the Judge in this trial to instruct you about the law which is applicable in the case.

To begin with, and just to review a little what has transpired today, this Defendant was arraigned in open court, on April 26, 1967, on an affidavit charging him with the offense of being a suspicious person, within the City of Euclid, County of Cuyahoga, and State of Ohio.

This charge was brought under Section 583.01 of the codified ordinances of the City of Euclid, which reads as follows:

"A suspicious person"—there are a number of para-[fol. 130] graphs here, but, through the testimony which was presented and comments of both the Prosecutor and the Defendant, the Court would restrict your consideration of this ordinance to one paragraph. That paragraph is as follows:

Any person—in other words, it says—it shall be unlawful for any suspicious person to be within the municipality, and goes on to say the following should be sus-

picious persons, and there are a number of paragraphs. However, the one which I would ask you to restrict your decision to would be as follows:

Section E. "Any person who wanders about the streets or other public ways or who is found abroad at a late or unusual hour in the night without any visible or lawful business and who does not give satisfactory account of himself."

* * * * *

JUDGMENT
Filed August 21, 1967

8-21-67 Parties in court. Trial had. The jury having heard the testimony of the witnesses and parties, the arguments of prosecutor and defendant, and the charge of the court thereon returned the following verdict after due deliberation:

"We, the Jury in this case, being duly impaneled and sworn, do find the defendant guilty as charged in the affidavit"

(signed) Frank J. Aubel, Foreman, also signed by each of the jurors.

At the request of the defendant the jury was polled individually, and each concurred in the verdict. Thereupon, having been in open court when the jury returned its verdict, and being advised by the court of the jury's verdict defendant was then asked by the court if he had anything to say why judgment should not be pronounced against him, and having nothing but what he has already said, the court pronounced the following judgment:

It is therefore considered and adjudged by the court that defendant James Palmer, pay a fine of $50.00 and costs of this proceeding and that he be sentenced to Cuyahoga County jail for 30 days.

Defendant having given his oral notice at this time of his intention to appeal and upon his request, stay of execution is granted pending appeal. Same bond. $500.00 cash.

/s/ WM. F. BURNS
Judge

ORDER
Filed September 7, 1967

Motion to Permit filing of Motion for New Trial, granted.

/s/ BURNS
J.

ORDER
Filed September 13, 1967

Defendant in court with counsel R. W. Jones. Motion of defendant that Motion for New Trial also include Motion for judgment for defendant not withstanding the verdict granted.

Hearing had in Motions. Motion for Judgment for defendant not withstanding the verdict and Motion for New Trial overruled. Execution of sentence suspended pending filing of notice of appeal. Appeal bond $500.00

/s/ BURNS
J.

IN THE COURT OF APPEALS
OF CUYAHOGA COUNTY, OHIO

No. 28810

CITY OF EUCLID, PLAINTIFF-APPELLEE

vs.

JAMES PALMER, DEFENDANT-APPELLANT

JOURNAL ENTRY

Filed August 13, 1968

This cause came on for hearing upon the appeal on questions of law, assignments of error, bill of exceptions, the transcript and the original papers and pleadings from the Euclid Municipal Court of Cuyahoga County, and was argued by Counsel for the City of Euclid and by the defendant, on consideration whereof the Court finds there is no error apparent on the record in said proceedings and judgment prejudicial to the appellant.

It is, therefore, considered by the Court that the judgment of the Euclid Municipal Court be, and the same is hereby affirmed and that the costs be assessed against the appellant herein.

It is further ordered that a copy of this order of affirmance be certified to said Euclid Municipal Court as provided by law.

To all of which appellant excepts.

It is ordered that a special mandate issue out of this court directing the Euclid Municipal Court to carry this judgment into execution.

Approved:

/s/ JAMES PALMER
JAMES PALMER
For Defendant-Appellant

/s/ CHAS. W. WHITE
Presiding Judge

WILLIAM T. MONROE
Director of Law,
City of Euclid

By: /s/ ROBERT F. NICCUM
ROBERT F. NICCUM
Assistant Director of Law
City of Euclid
Attorney for Plaintiff-Appellee

IN THE SUPREME COURT OF OHIO

No. 68-571

CITY OF EUCLID, APPELLEE

vs.

JAMES PALMER, APPELLANT

APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY

ORDER
Filed December 18, 1968

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Euclid Municipal Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR CUYAHOGA COUNTY TO CERTIFY ITS RECORD

ORDER
Filed December 18, 1968

It is ordered by the Court that this motion is overruled. Costs: Motion Fee, $20.00, paid by James Palmer

ORDER
Filed January 22, 1969

It is ordered by the court that rehearing in this case is denied.

SUPREME COURT OF THE UNITED STATES

No. 134 Misc., October Term, 1969

JAMES PALMER, APPELLANT

v.

CITY OF EUCLID, OHIO

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

May 4, 1970

SUPREME COURT OF THE UNITED STATES

No. 134 Misc., October Term, 1969

JAMES PALMER, APPELLANT

v.

CITY OF EUCLID, OHIO

APPEAL from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the appellate docket as No. 1516 and placed on the summary calendar.

May 4, 1970

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